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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

MILLWRIGHT LOCAL NO. 1079,
Petitioner,

vs.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

and

SIGURD LUCASSEN,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Andrew S. Lipton
[Counsel of Record]
Robert E. Manley
MANLEY, BURKE & FISCHER
4100 Carew Tower
Cincinnati, Ohio 45202
Telephone: (513) 721-5525

G. Daniel Spahn
FREIFIELD, BRUZZESE, WEHR, MORELAND, STRAUS & SPAHN
300 Sinclair Building
Box 1506
Steubenville, Ohio 43952
Telephone: (614) 282-5323

Attorneys for Petitioner

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTIONS PRESENTED FOR REVIEW

1. How much deference should a court give under § 301 of the Labor Management Relations Act to a union official's interpretation of a provision in a union's constitution, particularly where that provision limits the powers being exercised by that official so as to protect and preserve rights of union members?

2. Is the application of a provision in a union constitution which permits the dissolution and merger of union locals reasonable under § 101 of the Labor Management Reporting and Disclosure Act where attendance, participation and voting rights of a class of members are substantially impaired?

STATEMENT OF INTERESTED PARTIES

All interested parties are listed in the caption of this case.

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IN THE

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No. _____

MILLWRIGHT LOCAL NO. 1079,
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UNITED BROTHERHOOD OF CARPENTERS
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and

SIGURD LUCASSEN,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Millwright Local 1079, plaintiff in the action below, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit filed on the 10th day of July, 1989, rehearing denied on the 8th day of August, 1989.

OPINIONS BELOW

The opinion of the Court of Appeals filed on July 10, 1989, is reproduced in Appendix A. The Memorandum Opinion and Order of the United States District Court, filed on July 28, 1988, is reproduced in Appendix B.

JURISDICTION

The judgment of the Court of Appeals was filed on July 10, 1989. Petitioner's petition for rehearing was denied on August 8, 1989. This petition was filed within 90 days. The jurisdiction of this Court is founded upon 28 U.S.C. § 1254(1).

STATUTES INVOLVED

29 U.S.C. § 185. Suits by and Against Labor Organizations.

> "(a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

29 U.S.C. § 411. Bill of Rights; Constitution and Bylaws of Labor Organizations.

> "(a)(1) Equal rights. Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

29 U.S.C. § 412. Civil Action for Infringement of Rights; Jurisdiction.

> "Any person whose rights secured by the provisions of this title [29 USC §§ 411 et seq.] have been infringed by any violation of this title [29 USC §§ 411 et seq.] may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

STATEMENT OF THE CASE

Respondent, United Brotherhood of Carpenters and Joiners of America (hereinafter "UBCJA"), seeks to dissolve petitioner Millwright Local 1079 and to merge its jurisdiction into two other locals, obliging Local 1079 members to travel 150-200 miles to attend meetings, participate in union affairs, and to vote.

Millwright Local 1079 is a subordinate labor organization within the UBCJA. Local 1079 is located in Steubenville, Ohio, and has jurisdiction over Columbiana, Jefferson, Harrison, Belmont and Monroe Counties in Ohio, and Hancock, Brooke, Marshall and Ohio Counties in West Virginia. (Appendix B at 16a, ¶1.) The Local was established in 1957 and is composed solely of Millwrights many of whom had formerly been members of carpenters' locals.[1] (Tr. I-93-94.) It currently has approximately 90 members, 50-90% of whom attend Local union meetings, in comparison to the 10% national average. (Tr. I-18.)

On January 25, 1988, the First General Vice-President of the UBCJA sent a letter to local unions and district councils in Ohio, setting forth a new organizaton of the UBCJA in Ohio. (Appendix B at 19a, ¶12.) This reorganization provided that Local 1079 would be dissolved and that the Local's jurisdiction in Ohio would be merged with Local 1871 in Cleveland, Ohio; Local 1079's jurisdiction in West Virginia would be transferred to the union local located in Parkersburg, West Virginia. (Appendix B at 19a, ¶¶13-14.) Local 1079 members would thus have an option of joining either the Cleveland local or the Parkersburg local. (Appendix B at 19a, ¶15).

The reorganization was taken pursuant to Section 6A of the UBCJA Constitution (Joint Exhibit No. 1) which provides in pertinent part:

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[1] Millwrights are a specialty with construction trade (App. 351), and are trained in setting up, maintaining and repairing machinery.

> "The United Brotherhood is empowered, upon agreement of the Local Unions and Councils directly affected, or in the discretion of the General President subject to appeal to the General Executive Board, where the General President finds that it is in the best interests of the United Brotherhood and its members, locally or at large, to establish or dissolve any Local Union or Council to merge or consolidate Local Unions or Councils, to establish or alter the trade or geographical jurisdiction of any Local Union or Council, to form Councils and to permit, prohibit or require the affiliation with or disaffiliation from any Council by any Local Union, including the right to establish state-wide, province-wide and regional Local Unions or Councils having jurisdiction over specified branches or subdivisions of the trade. The vested rights of the members shall be preserved and, where action as herein described is taken, the General President and General Executive Board shall preserve the membership rights of the members of affected Local Unions, including their rights to attend and participate in meetings, to vote, to nominate candidates and to be nominated and run for office or business representative. In connection with the foregoing, the General President may, upon finding it appropriate, appoint a committee to hold hearings upon due notice to directly affected Local Unions or Councils, and make findings and recommendations."

On January 28, 1988, Local 1079 appealed the dissolution and merger to the General Executive Board, requesting an opportunity to appear and present arguments. (Appendix B at 19a, ¶16.) On February 17, 1988, Local 1079 was denied its request for an appearance, but was offered the opportunity to file a written position statement. (Appendix B at 20a, ¶17.) After this was done (Joint Exhibit 7, App. 159), the General Executive Board sustained the decision of the General President and dismissed Local 1079's appeal. (Appendix B at 20a, ¶18.)

In response to the denial of its appeal, on May 5, 1988, Local 1079 commenced this action in the Court of Common Pleas of Jefferson County, Ohio, seeking to enjoin the UBCJA from removing the Local's charter or otherwise interfering with its continued operation. The defendants removed the action to the United States District Court for the Southern District of Ohio, Eastern Division, on May 13, 1988, claiming federal court jurisdiction under 29 U.S.C. §§ 185 and 401 et seq. (Petition for Removal; Appendix B at 20a, ¶21.)

The gist of Local 1079's complaint was that the planned reorganization would require Local 1079 members to travel more than 150 miles to get to Cleveland to attend meetings and thus to participate in union affairs and to vote on union matters. This distance would make attendance at and participation in meetings "out of the question." (Tr. I-95.) Petitioner thus argued that the merger violated both Sections 6A of the UBCJA Constitution and Section 101 of the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. Section 411.

REASONS FOR GRANTING THE WRIT

A. A Fair And Reasonable Interpretation Of A Provision In A Union Constitution Cannot Be Found Simply Upon a Review Of The Apparent Reasonableness Of The Union Official's Act Without Consideration Of The Language Of The Provision Being Interpreted.

A union constitution constitutes a contract between the international and the local within the meaning of § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185. *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry* v. *Local 334*, 452 U.S. 615 (1981). In that case, this Court left for another day the fashioning of the substantive federal law to apply in § 301 cases. The Court of Appeals here stated that a union's interpretation of its constitution must be shown deference, interfering "only where the official's interpretation is not fair or unreasonable." Appendix A at 5a, quoting *Vestal* v. *Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971), cert. denied, 406 U.S. 934 (1972).[2]

The appellate court here found that the union's "interpretation" was fair and reasonable because the district court's finding of the availability of rotating meetings and mail-in ballots was not clearly erroneous. (Appendix A at 9a.) However, conspicuously absent from the Court of Appeals decision is *any* analysis of Section 6A of the UBCJA constitu-

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[2] While other appellate courts have articulated a similar standard, see, e.g., *Motion Picture and Videotape Editors Guild, Local 776* v. *Local 695*, 800 F.2d 973, 975 (9th Cir. 1986), cert. denied, 107 S.Ct. 3267 (1987); *Newell* v. *International Brotherhood of Electrical Workers*, 789 F.2d 1186, 1189 (5th Cir. 1986), this is contrary to general contract law requiring all ambiguities to be interpreted against the scrivener. *Lytle* v. *Freedom International Carrier, S.A.*, 519 F.2d 129 (6th Cir. 1975); *Central Realty Company* v. *Clutter*, 62 Ohio St.2d 411 (1980). More importantly, this standard fails to address the inequity of deferring to an interpretation by the very official whose authority may be limited, as in the case at hand, by the constitutional provision he is interpreting.

tion or any discussion of the limitation on the authority to merge created by the duty to preserve members' rights to attend and participate in meetings, to vote, to nominate and be nominated, and to hold office.

By failing to focus on the language of Section 6A of the UBCJA constitution, instead being satisfied merely with the apparent reasonableness of the act of merger, the courts below deferred totally to the UBCJA General President and abdicated their duty to determine if his interpretation of Section 6A was fair and reasonable. Thus, the question presented for review is just how much deference is due to an official's interpretation of a union constitution; that is, whether a court may uphold an international's actions (even if they are deemed reasonable) without an examination of the constitutional provision at issue. This analysis is particularly appropriate where, as in the case *sub judice*, the limitations in the constitution on the interpreting official's authority simultaneously create the very rights which are being impaired.

Section 6A of the UBCJA constitution clearly gives the General President, subject to appeal to the General Executive Board, the power to merge locals "in the best interests of the United Brotherhood and its members, locally or at large." The appellate court, citing *Local 657 of the UBCJA* v. *Sidell*, 552 F.2d 1250 (7th Cir. 1977), cert. denied, 434 U.S. 862 (1977) (interpreting the same section of the UBCJA constitution), held that the decision to merge was allowable.[3] (Appendix A at 11a.) *Sidell*, however, never addressed or cited the limiting language in Section 6A relevant here:

> "The vested rights of the members *shall be preserved* and where action as herein described is taken, the General

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[3] Similarly, the district court here, citing *Local 657, UBCJA* v. *Sidell*, supra, 552 F.2d at 1256, concluded that it could not "rewrite" § 6A to strip the UBCJA General President of the authority to merge Local 1079 into two other locals. (Appendix B at 17a, ¶4.)

> President and General Executive Board *shall preserve the membership rights* of the members of affected Local Unions, including their right to attend and participate in meetings, to vote, to nominate candidates and to nominate and run for office or business representative." (Emphasis supplied.)

Nowhere in the decisions of either the district or appellate courts is the language of Section 6A discussed or examined; nowhere is the significance of the impairment on local members' rights considered in light of the duty to preserve those membership rights. Instead, the lower courts looked only at the abstract reasonableness of the decision to merge; the fairness and reasonableness of the UBCJA's *interpretation* of Section 6A was never truly addressed. This failure is not deference but rather a total abdication of the court's duty.

The undisputed evidence in this case is that members of Local 1079 would have to travel 150-200 miles to Local 1871 in Cleveland (Tr. I-22-23). This would render attendance at meetings difficult, if not impossible. (Tr. I-36.) One telling example of the impact on the right to attend and participate in meetings came from Local 1079 member W. Millich. He testified that in 35 years as a union member he had missed only six meetings. However, with the merger, attendance and participation would be "out of the question." (Tr. I-94-95.)

The courts below never indicated how this impact could be deemed a preservation of the right to attend and participate in meetings within the meaning of Section 6A. Instead, the lower courts focussed on the availability *vel non* of rotating meetings and mail-in ballots. However, whether or not these alternatives would be available begs the question:[4] prior to

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[4] Petitioners have consistently argued that rotating meetings and mail-in ballots are possible only with a by-law amendment approved by the 700 Local 1871 members (unlikely and speculative at best) or a special dispensation from the General President who has already expressed his disfavor. (Tr. I-72, II-7-9.)

merger, attendance and participation at Local 1079 meetings in Steubenville had been easy (Tr. I-33); after the merger, with the distance to Cleveland prohibitively long, mail-in ballots would do nothing to facilitate attendance, and rotating meetings would permit only occasional attendance and participation.

Furthermore, petitioners argued that their ability to vote and hold office would be impaired by virtue of the union rule requiring one year in a local before being able to vote and a longer wait to run for office. (Tr. I-37-38.) A UBCJA witness, Executive Board Member Hanahan, testified these rights were "guaranteed," but admitted that they would be "mitigated" by the twelve (12) month delay. (Tr. I-140.) Neither the UBCJA nor the courts ever indicated how this mitigation of Section 6A rights constituted a preservation of those rights.

In *Local 317, National Post Office Mail Handlers, Etc.* v. *National Post Office Mail Handlers, Etc.*, 696 F.2d 1300, 1302 (11th Cir. 1983), the court noted that the focus of the "fairness and reasonableness" test of a union's interpretation must be on "whether it is a fair interpretation of the words and provisions of the Constitution. . . ." The Sixth Circuit omitted any such focus, obviously believing it could look solely at the independent reasonableness of the act. This mistake is highlighted by the appellate court having equated petitioner's LMRA § 301 claim with its LMRDA § 101 claim. (Appendix A at 5a, n5)

A writ of certiorari should be granted to further establish the substantive federal law left open in *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry* v. *Local 334*, supra, 452 U.S. at 627. By granting the writ sought by petitioner, this court could clarify the deference due and the analysis required in LMRA § 301 cases.

B. A Merger Which Substantially Impairs The Rights Of A Class Of Union Members To Attend Meetings, Participate In Deliberations, And Vote Upon Union Business Is Not Reasonable Under § 101 of the LMRDA.

Section 101(a) of the Labor Management Reporting and Disclosure Act, part of the "Bill of Rights of Members of Labor Organizations," guarantees to every member of a labor organization equal rights and privileges to nominate candidates, vote in elections, attend meetings, and participate in deliberations, subject to reasonable rules and regulations. (29 U.S.C. § 411(a)(1).)

In *American Federation of Musicians* v. *Wittstein*, 379 U.S. 171, 182-183 (1964), this Court held that "The pervading premise of both these titles [I and II of the LMRDA] is that there should be full and active participation by the rank and file in the affairs of the union." This proposition, that rank and file union members should be able to "participate fully in the operation of their union," was echoed in *Wirtz* v. *Hotel, Motel and Club Employees Union*, 391 U.S. 492, 497 (1968). As the court in *Wirtz* noted, while the LMRDA permits "reasonable" limitations on the availability and exercise of the rights contained in the statute, any limitation is not to be given a broad reach but rather "must be measured in terms of its consistency with the Act's command to unions to conduct free and democratic union elections." *Wirtz*, supra, 391 U.S. at 499.

The evidence in the matter *sub judice* clearly establishes that, under the reorganization plan, the members of Local 1079, unlike their Local 1871 counterparts, would be effectively prohibited from attending union meetings and thus from participating in union affairs and voting on union matters. Therefore, the question presented is whether Section 6A of the UBCJA Constitution may be applied in such a way as to result in the effective deprivation of rights secured under the Labor Management Reporting and Disclosure Act.[5]

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[5] While respondents have raised the question of petitioner's standing to

The District Court cursorily rejected petitioner's § 101 claim, concluding that the section merely prohibits discrimination in the right to nominate or vote, which it did not think was alleged. (Appendix B at 18a, ¶8.)[6] The Court of Appeals simply agreed without any discussion of the issue.

A union rule which is applied in such a way as to impose a substantial burden on certain members' meeting and voting rights is discriminatory and cannot be countenanced under § 101. In *McGinnis* v. *Local Union 719, International Brotherhood of Teamsters*, 774 F.2d 196 (7th Cir. 1985), cert. denied, 475 U.S. 1121 (1986), a percentage of the Local's members lived 150 miles or more from the union hall. The Local had a by-law requiring in-person voting. The court held that the burden created for these members was discriminatory and could be remedied under § 101 because, though facially neutral, the in-person voting requirement had a disparate impact of the Local's members.

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assert § 101 rights, the Court of Appeals did not decide the issue but assumed that such standing exists. (Appendix A at 15a.) The District Court did not address the question. (Appendix A at 13a, n 7.) Be that as it may. Local 1079 enjoys standing here to raise the § 101 rights of its members. *Nelson* v. *International Association of Bridge, Structural and Ornamental Iron Workers*, 680 F.Supp. 16 (D.D.C. 1988); *Broadcaast Employees* v. *International Brotherhood of Teamsters*, 419 F.Supp. 263 (E.D. Pa. 1976). See also, *International Union* v. *National Right to Work Legal Defense and Education Foundation, Inc.*, 590 F.2d 1139, 1145 (D.C. Cir. 1978); *Navarro* v. *Gannon*, 385 F.2d 512 (2nd Cir. 1965); *Parks* v. *International Brotherhood of Electrical Workers*, 314 F.2d 886, 920-922 (4th Cir. 1963).

[6] The District Court cited *Calhoon* v. *Harvey*, 379 U.S. 134, 139 (1974), which made this point in a more limited context, never intending to preclude a claim such as the one *sub judice*. There, this court described the equal rights provision of § 101 as "a command that members and classes of members shall not be discriminated against in their right to nominate and vote." The *Calhoon* court went on to note, however, that "the complaining union members here have not been discriminated against in any way and have been denied no privilege or right to vote or nominate which the union has granted to others." 379 U.S. at 139. The same cannot be said in the case at hand; Local 1079 members would, for all practical purposes, be denied meeting and voting rights available to, for example, Local 1871 members.

Alvey v. *General Electric Co.*, 622 F.2d 1279 (7th Cir. 1980), involved a union constitution permitting only members in good standing to participate in union affairs. It also provided that a member who did not pay his dues would not be in good standing and that laid-off members were not permitted to pay dues. The effect of these facially neutral rules was that laid-off members could not participate in votes, including those relating to seniority and recall. The court held that the practical effect of the application of the facially neutral rules was discriminatory and should be tested under § 101.

Section 6A of the UBCJA constitution (permitting mergers which preserve meeting and voting rights), while facially neutral, has a disparate impact when applied here. Only Local 1079 members would have to drive 150-200 miles to attend meetings; other Local 1871 members would have no such burden. Only Local 1079 members would need rotating meetings or the right to use mail-in ballots; other Local 1871 members would have no such need. Clearly, the impact of the UBCJA merger and reorganization plan was discriminatory. Given the broad remedial purpose of the LMRDA, the § 101 reasonableness test should be applied. *McGinnis* v. *Local Union 710*, supra, 774 F.2d at 199; *Navarro* v. *Gannon*, 385 F.3d 512, 518 (2nd Cir. 1967); cert. denied, 390 U.S. 989 (1968); *Knox County Local* v. *National Rural Letter Carriers' Assoc.*, 720 F.2d 936, 938 (6th Cir. 1984); *Hall* v. *Cole*, 412 U.S. 1 (1973). This is true even where the denial of voting rights is not complete, but rather an impairment or diminution. *McGinnis* v. *Local Union 710*, supra, 774 F.2d at 201; *Bunz* v. *Moving Picture Operators' Protective Union*, 567 F.2d 1117, 1121 (D.C. Cir. 1977).

Once it is determined that § 101 applies, the interest of the UBCJA in the reorganization must be balanced against the Local 1079 members' interest in full and fair participation in their unions' affairs. In both *Local 3489, United Steelworkers of America* v. *Usery*, 429 U.S. 305 (1977), and *United Steel Workers of America* v. *Sadlowski*, 457 U.S. 102 (1982), this

Court conducted a balancing test to determine whether a union rule which interfered with rights under the LMRDA was valid. *Usery* involved a union rule limiting union members' eligibility to hold office. After analyzing the arguments raised in support of the rule and the burdens imposed on union members, the court concluded that "the anti-democratic effects of the meeting attendance rule outweigh the interest urged in its support." 429 U.S. at 310. On the other hand, in *Sadlowski*, this Court upheld a union rule limiting outsider campaign contributions because, "although the outsider rule does effect rights protected by the statute, as a practical matter, the impact may not be substantial." 457 U.S. at 113, 115.

That balancing test has been applied in numerous lower court decisions. For example, in *International Longshoremen's Ass'n, Local Union 1516* v. *International Longshoremen's Ass'n*, 815 F.2d 637 (11th Cir. 1987), the court overturned a union's decision to merge because, among other things, the justification to merge (that the local was inactive) was not supported by the evidence either at trial or when the decision was made. In the absence of supporting evidence, the decision could not be deemed reasonable. 815 F.2d at 641. In *Alvey* v. *General Electric Co.*, supra, 622 F.2d at 1285, the court indicated that the reasonableness test "is a balance between the anti-democratic effects of the challenged rule and the union interests urged in its support." This balancing test applies not just to a bare rule, but also to its application. 622 F.2d at 1286. See also *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Cir. 1987), where the court indicated that the reasonableness of a union rule must be judged by its effect on free and democratic union processes.

Thus, in the case at hand, the UBCJA justifications must be balanced against the burdens on the members of Local 1079. Neither the District Court nor the Circuit Court engaged in the required balancing test. The UBCJA offered several justifications for the merger, supposedly focusing on uniformity and fairness. (Tr. I-139.) First, the reorganization was

essentially along state lines. This was allegedly needed because business agents of various districts and locals which crossed state lines had difficulty in keeping abreast of legal developments in more than one state. (Appendix B at 18a, ¶6; Tr. I-116-119.) In addition, there was concern about favoritism and unfair treatment of union members in locals not within a district council. (Appendix B at 18a, ¶7; Tr. I-117.)[7] Finally, employers had apparently expressed a need for locals with just skilled Millwrights rather than locals which mixed both millwrights and carpenters. (App. 352-353.)

Curiously, however, the UBCJA never indicated how restructuring along state lines would help with fairness, especially where 90% of the contracting employers bring crews from around the country and simply check into area locals. (Tr. I-149-151.) In addition, the UBCJA admitted that there were exceptions to its restructuring along state lines, particularly in Ohio. For example, the Parkersburg, West Virginia Local reaches into four counties in Ohio. (Tr. I-116, 155.) Why the UBCJA believed Local 1079 could not have an agent astute enough to comprehend Ohio and West Virginia law while the Parkersburg local could find such an agent was never disclosed. Furthermore, a union's claim that a rule is necessary for purposes of uniformity is "analytically empty." *Alvey* v. *General Electric Co.*, supra, 622 F.2nd at 1286.

More importantly, as the District Court noted, the UBCJA offered absolutely no evidence that Local 1079 was experiencing any of the problems that justified the reorganization. (Tr. I-150.)

Against these minimal and unsubstantiated interests asserted by the UBCJA must be balanced the impact of the

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[7] However, just prior to reorganization, the UBCJA had permitted Local 1079 to withdraw from the District Council because of the burden created by the distance members would have to travel to Council meetings. (Tr. I-16-17.)

proposed reorganization on Local 1079's members. The record is replete with testimony establishing that these members would not be able to attend meetings in Cleveland because of the long distances they would have to travel. (Tr. I-22-23; 36-37; 94-95.) Not being able to attend meetings would result in their not being able to participate in deliberations or voting. The UBCJA offered two alternative solutions: it suggested that the Cleveland local could either rotate meetings or have mail-in ballots.

The district court focused on the testimony of General Executive Board member Hanahan who stated that in the past he had directed district councils and local unions to rotate meetings and that none had refused. (Tr. I-155.) This testimony, however, belies the issue since it was admitted that to either rotate meetings or obtain mail-in ballots, Local 1079 would have to apply for the relief sought by seeking a by-law or special dispensation from the UBCJA General President. (Tr. I-152-153, II-7-8.) The testimony also indicated that it would be unlikely for Cleveland Local 1871 to vote to adopt a by-law or to seek a dispensation from the general president to rotate meetings. (Tr. II-10.) Furthermore, the UBCJA General President had already indicated his disfavor for rotating meetings. (Tr. II-7.) However, even if meetings were rotated, Local 1079 members would only be able to attend sporadic meetings. This cannot be deemed a preservation of their rights.

Mail-in ballots suffer the same infirmities, requiring either a bylaw to be adopted by Cleveland Local 1871 or for the Cleveland local to request a dispensation from the general president. (Tr. II-8.) More importantly, mail-in ballots do nothing to address the problem of Local 1079 members' right to attend meetings and participate in deliberations, rights guaranteed by § 101 of the LMRDA.

In *Alvey* v. *General Electric Co.*, supra, the court noted the importance of being able to attend meetings to speak out on union issues. 622 F.2d at 1285, n. 6. In *McGinnis* v. *Local*

Union 710, supra, 774 F.2d at 201, the court found that long travel distances created an impermissible burden on § 101 rights because some members would not be able to attend meetings. *Donovan* v. *District Large No. 100*, 666 F.2d 883 (5th Cir. 1982), similarly recognized that travel distances may create obstacles to attending meetings and voting. 666 F.2d at 884-85.[8]

Here, the UBCJA General President's exercise of the Section 6A authority to order a merger resulted in so severe a limitation on the right to attend and participate in meetings and to vote as to amount to an unreasonable and discriminatory deprivation. The Court of Appeals only superficially engaged in the required balancing test. It did not look behind the reasons offered by the UBCJA nor did it seek to determine whether any evidence supported the Union's assorted justifications. Instead, the Court took the UBCJA's allegations at face value and minimized the impact on Local 1079, describing their concerns as "speculative." If the LMRDA is to have any continued vitality, its protections must be given more than lip service.

The application of a facially neutral constitutional provision such as Section 6A is not reasonable under § 101 where the union's justifications are neither supported by the record

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[8] At issue in *Donovan* was a requirement that members actually attend meetings where nominations for offices took place. The court held that this nomination procedure was improper:

> "It is not enough that employees could have made arrangements to vote; full participation by rank and file is the goal of the act. This nomination process, as we view it on the facts in this record, discourages full participation. . . ." 666 F.2d at 887-888.

The court thus concluded that:

> "A rule which restricts participation without a valid purpose is unreasonable." 666 F.2d at 888.

Just such a rule is present in the case at hand.

nor legally sufficient and where the impact on local members is substantial and discriminatory. This issue is particularly significant since the underlying pressures for mergers on both national and local levels (e.g., membership decline, financial hardship, desire for area-wide bargaining) appear to be increasing. See, e.g., *Unions In Transition: Entering the Second Century*, S. Lipset, Ed. (1986), pp. 75-76, 90-94; *When Unions Merge*, G. Chasin (1986); Chasin, "Local Union Mergers: Frequency, Forms and National Union Policy," Journal of Labor Research Vol. IV, No. 4 (Fall 1983): pp. 325-338.

CONCLUSION

A writ of certiorari should be issued to review the judgment of the Court of Appeals so as to (1) establish the standard under § 301 of the LMRA to review a union official's interpretation of a constitutional provision; and (2) consider the effect of mergers on rights secured under § 101 of the LMRDA.

Respectfully Submitted,

Andrew S. Lipton
[Counsel of Record]
Robert E. Manley
MANLEY, BURKE & FISCHER
4100 Carew Tower
Cincinnati, Ohio 45202
Telephone: (513) 721-5525

G. Daniel Spahn
FREIFIELD, BRUZZESE, WEHR,
MORELAND, STRAUS & SPAHN
300 Sinclair Building
Box 1506
Steubenville, Ohio 43952
Telephone: (614) 282-5323

Attorneys for Petitioner

APPENDIX A

No. 88-3812
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MILLWRIGHT LOCAL #1079,
Plaintiff-Appellant,

vs.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Ohio

Decided and Filed July 10, 1989

Before: MARTIN and BOGGS, Circuit Judges; and CONTIE, Senior Circuit Judge.

CONTIE, Senior Circuit Judge. Plaintiff, Millwright Local #1079 (Local 1079) appeals from the judgment of the district court dismissing this action brought under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (LMRA)[1]

[1] Section 301 reads as follows:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

and section 101 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411 (LMRDA),[2] seeking injunctive relief and money damages from defendants United Brotherhood of Carpenters and Joiners of America (UBCJA) and its General President Sigurd Lucassen. For the following reasons, we affirm the judgment of the district court.

I.

This case involves the attempted reorganization of local labor organizations by the UBCJA.[3] The UBCJA is an international labor organization comprised of district councils, state councils, and local unions. Local 1079 is a subordinate labor organization within the structure of the UBCJA. Local 1079 is located in Steubenville, Ohio and has jurisdiction over five counties in Ohio and four in West Virginia. Local 1079 has approximately eighty-six members.

The UBCJA decided to reorganize its locals in the state of Ohio. The General Constitution of the UBCJA (the constitution) gives the UBCJA and the General President the following relevant authority:

> The United Brotherhood is empowered upon agreement of the Local Unions and Councils directly affected, or in the discretion of the General President subject to appeal

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[2] Section 101 reads as follows:

> Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

[3] Local 1079 sought to enjoin the dissolving of its charter or its merger with other locals until it was accorded its rights guaranteed by the General Constitution of the UBCJA. On September 9, 1988, this court granted injunctive relief pending appeal and enjoined the removal of the charter prior to a hearing on the merits. Accordingly, Local 1079 has not been dissolved or merged as of this date.

> to the General Executive Board, where the General President finds that it is in the best interests of the United Brotherhood and its members, locally or at large, to establish or dissolve any Local Union or Council, to merge or consolidate Local Unions or Councils, to establish or alter the trade or geographical jurisdiction of any Local Union or Council, to form Councils and to permit, prohibit or require the affiliation with or disaffiliation from any Council by any Local Union, including the right to establish state-wide, province-wide and regional Local Unions or Councils having jurisdiction over specified branches or subdivisions of the trade. The vested rights of the members shall be preserved and where action as herein described is taken the General President and General Executive Board shall preserve the membership rights of the members of affected Local Unions, including their right to attend and participate in meetings, to vote, to nominate candidates and to be nominated and run for office or business representative.

Constitution § 6A.

Under the reorganization plan, the five Ohio counties under Local 1079's jurisdiction would be placed under the jurisdiction of the Northeast District Council located in Cleveland. Local 1079 and Cleveland Local 1929 would be merged with Local 1871, which would be located in Cleveland. Jurisdiction over the West Virginia counties would be transferred to a West Virginia millwright local in Parkersburg. Members of Local 1079 would be given the opportunity to join either Local 1871 or the Parkersburg local. Members who joined the Cleveland local would still be able to work in West Virginia by obtaining a "Working Permit". The district court found, however, that members working in another local on a permit may encounter resentment from members of the local.

Local 1079 appealed the decision of the General President to reorganize to the General Executive Board. The General

Executive Board dismissed the appeal. Local 1079, sought to appeal the Executive Board's decision to the General Convention of the UBCJA, which was not scheduled to convene until 1991. The appeal was denied on May 4, 1988 in a letter from the General President. The letter relied on section 57G of the constitution which reads in relevant part as follows: "[D]ecisions of the General Executive Board in all cases involving geographical jurisdiction, mergers, consolidations, and formation of Councils shall be final."

On May 5, 1985, appellant filed a complaint and a motion for a preliminary injunction in the Jefferson County Court of Common Pleas. The case was removed to district court on May 13, 1988. On June 17, 1988, appellant filed an amended complaint alleging a violation of section 301 of the LMRA[4] and alleging a violation of section 101 of the LMRDA. On July 28, 1988 the district court rendered judgment for appellee. This timely appeal followed.

Appellant raises the following arguments: (a) the UBCJA's interpretation of the constitution is unfair and unreasonable since by its actions the UBCJA denied Local 1079's members their right to vote, attend meetings and hold office; (b) the actions of the UBCJA violated section 101 by denying appellant's members' right to vote; (c) the district court erred in finding that appellant had no right to appeal to the General Convention. Appellee counters these arguments and argues further that Local 1079 could not bring a LMRDA action.

II.

In deciding to merge Local 1079 with the Cleveland local, the UBCJA determined that the merger was authorized by section 6A of the constitution and that the merger did not infringe on any of the rights set forth in that section.

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[4] Local 1079 alleged that the UBCJA breached the contract with the local in that its actions were contrary to the constitution. A union constitution is a contract between labor organizations under section 301. *United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus.* v. *Local 334*, 452 U.S. 615, 619-20 (1980).

The standard by which this court reviews a union's interpretation of its constitutin is well settled: "Courts are reluctant to substitute their judgment for that of union officials in the interpretation of the union's constitution, and will interfere only where the official's interpretation is not fair or reasonable." *Vestal* v. *Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971), *cert. denied*, 406 U.S. 934 (1972). *See also Motion Picture & Videotape Editors Guild, Local 776* v. *Local 695*, 800 F.2d 973, 975 (9th Cir. 1986) (absent bad faith or special circumstances union's interpretation of its constitution should not be disturbed by the court), *cert. denied*, 107 S. Ct. 3267 (1987); *Newell* v. *International B'hood of Elec. Workers*, 789 F.2d 1186, 1189 (5th Cir. 1986) ("we will not invalidate the International's interpretation of its own constitution unless it is 'patently unreasonable' ").

Appellant argues that the UBCJA's interpretation of section 6A of the constitution is unfair and unreasonable for the following reasons: the decision was an effective denial of their right to vote, the decision affected their right to vote and hold office by creating a waiting period to vote and hold office, the decision affected their members' job mobility, and the decision affected their rights under existing collective bargaining agreements and the health and welfare plan.

A.

The major premise of appellant's argument is that the UBCJA's decision denied its members their right to vote which is protected by section 6A.[5] The basis of this argument is that Local 1079 members will effectively be denied the right to vote because they will have to travel to Cleveland (a distance of 150 miles) to exercise the right. Appellant asserts that because of the distance its members will have to travel, they will not attend meetings at which collective bargaining

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[5] This right is also protected by section 101 of the LMRDA. Accordingly, appellant's LMRDA claim rests on the same premise as its LMRA claim.

agreements and the health and welfare plan could be modified.[6]

Appellant relies heavily on *McGinnis* v. *Local Union 710, International Brotherhood of Teamsters*, 774 F.2d 196 (7th Cir. 1985), *cert. denied*, 475 U.S. 1121 (1986). In *McGinnis*, members of a Chicago Teamsters' local challenged the local's requirement that members personally attend meetings in order to vote on amendments to the bylaws. Eighteen percent of the local lived more than 150 miles from Chicago. The plaintiffs alleged that the requirement violated the equal voting privileges of section 101 and sought an order requiring the International to provide its remotely situated members with regional meetings or mail ballots. The court held that the in-person voting requirement placed a "very substantial burden" on the right to vote of a significant percentage of Local 710's members, *id.* at 201, and that the requirement is "an unreasonable denial of the equal voting rights of Local 710 members and constitutes a violation of Title I." *Id.* at 203.

Appellant argues that because its members will have to travel 150 miles to Cleveland, their voting rights will be burdened, and, therefore, the appellee's determination that the reorganization does not violate section 6A's provision protecting voting rights is not fair and reasonable.

Appellant's situation is distinguishable from the situation faced by the appellants in *McGinnis*. In *McGinnis*, the local had imposed an in-person voting requirement on its members and refused to authorize regional meetings or mail-in ballots. It is clear from *McGinnis*, that if, in that case, the International Union had provided regional meetings or mail-in ballots, there would not have been a section 101 violation. In

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[6] The argument concerning the change in collective bargaining agreements and the health and welfare plan is based on the argument that by merging with Local 1871, Local 1079 members would effectively lose their right to vote and, therefore, these agreements could be changed without their input. Because we are not persuaded by their right to vote argument these dependent arguments are equally unpersuasive.

the instant case, the district court made the following finding regarding regional meetings and mail-in ballots:

> In several other districts, meeting locations are rotated among the district's offices. Mail-in ballots are also used in some districts to facilitate voting by members who do not live near a district office. Board Member Hanahan has directed the Northeast Ohio Council to adopt one or both of these methods in order to accommodate all members.

Appellant argues that Hanahan did not direct that these methods be adopted.

"[F]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Fed. R. Civ. P. 52(a). In *Anderson* v. *City of Bessemer City*, 470 U.S. 564 (1985), the Court, while acknowledging that the meaning of the phrase clearly erroneous is not immediately apparent, recognized that

> 'a finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. This standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently. The reviewing court oversteps the bounds of its duty under Rule 52 if it undertakes to duplicate the role of the lower court.' In applying the clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues *de novo*. If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence

> differently. Where there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous.

Id. at 573-74 (citations omitted).

While he did not use the word "direct" in his testimony, Hanahan did give the following testimony:

> Q. Now, there's been some discussion about mail-out ballots. Since restructuring in Ohio, has the mail-out ballot been used in any election?
>
> A. Right today as we are sitting in this room in Columbus, Ohio, in this district council, the millwright local here applied for permission to use the mail-out ballot and was given in writing that permission. And it is typical in any large district council; Kentucky for example.
>
> Q. The concept of moving meetings from one site to another within the local, is that something that will happen in this district?
>
> A. Yes.
>
> Q. Is the general president in favor of that type of — that type of movement?
>
> A. We are not particularly — I don't — I can't speculate for the general president in his favor or disfavor. I can say that this general executive board member has instructed other district councils with a similar and like situation to have multiple places for their meetings, one time on one end of a district and other meeting in another.
>
> And by the way, I have never had anyone decline it or deny it.

Appellant argues that the district court's finding concerning mail-in ballots and rotation of meetings is erroneous

becaue the local would have to apply for permission to use these methods and that the by-laws would have to be changed to allow for these methods. Even given appellant's representations that the bylaws may have to be changed and they may have to apply for permission to use these alternative methods, we believe that based on Hanahan's testimony concerning the rotation of meetings, and the evidence that mail-in ballots have been used in other districts, the district court's finding is not clearly erroneous.

Accordingly, we conclude the UBCJA's interpretation of section 6A was fair and reasonable and that appellant's allegations concerning their right to vote are speculative and not in line with the evidence.

B.

Appellant also argues that its members' rights are further impaired by section 42M of the constitution which reads in part as follows:

> No member of a Local Union shall be eligible to vote for Officers, Business Representatives, assistant Business Representatives or Delegates or to vote on wages and working conditions unless such member has been at least 12 consecutive months a member of the Local Union and is in good standing in the Local Union at the time of voting, except where the Local Union has not been in existence the time here required. . . .

Appellant asserts that this provision will cause its members to wait a year until they can vote.

The district court made the following ruling on this issue:

> The evidence was conflicting as to whether members of Local #1079 would have to wait one year before being eligible to hold office under Section 31(E) of the union constitution. Witnesses for the plaintiff testified that members of the local would be subject to the limitation. Board member Hanahan, however, testified that, in his

> opinion, the one-year limitation does not apply when one local is merged with another. In any event, there is no evidence that the reorganization was undertaken with the purpose of barring members of Local #1079 from holding office for a year.

The conflict in the evidence referred to by the court was the testimony of Charles Haggerty that, in his view, the constitution would prohibit voting for one year, and the testimony of Hanahan that members transferring to Parkersburg would absolutely not have to wait a year to vote or hold office.

Appellant argues that the district court erred in looking at the purpose behind the reorganization rather than looking to see if, given appellant's allegations, the UBCJA's interpretation of the constitution is fair and reasonable. Although the district court did not recite the "fair and reasonable" standard in discussing this issue, its holding that the evidence did not show that the purpose of the reorganization was to deny Local 1079 members the right to vote or hold office for a year was equivalent to a determination that the UBCJA's action was fair and reasonable.

Given the fact that it is, at worst, uncertain whether appellant's members who transfer to Parkersburg will have to wait a year to vote and hold office, coupled with the lack of any evidence that the UBCJA intended or intends to bar Local 1079 members from voting or holding office for a year, we agree with the district court's conclusion that the waiting period issue does not make appellee's interpretation of the constitution allowing reorganization unfair or unreasonable.

C.

Appellant also argues that its members' job mobility is adversely affected by the merger. Currently, members of Local 1079 can work in either West Virginia or Ohio. Under the merger, workers will continue to be able to work in both states, but they will be required to obtain a work permit. Also, the court found that workers working on a permit en-

counter resentment from members of the local. The court found, however, that the conditions concerning working on a permit would be the same even without the reorganization.

Appellant correctly points out that the district court misses the issue, which is that prior to the merger, Local 1079 members did not need a permit to work in this region. However, this "error" by the district court does not change the issue before us, which is whether the UBCJA's view of its constitution was fair and reasonable, given the fact that the merger may affect some of its members by forcing them to work on a permit, which is a less desirable status than being a member of the union local. We believe appellant's argument must fail. In any situation where jurisdictional lines are being redrawn, local unions will encounter the problems cited by appellant. If these problems were held to make the international union's actions unfair and unreasonable, international unions would be unable to restructure their locals. Since there are many valid reasons for restructuring local jurisdictions which would benefit the union and the locals, — a change in population, a change in the job market, and a change in local or state laws are a few that come to mind — we do not believe that the fact that a shifting of jurisdictional lines may incidentally affect the attractiveness of working conditions for some members of the local makes the decision unfair and unreasonable.

Based on the foregoing, we agree with the district court's determination that the UBCJA's interpretation of its constitution to allow the merger of Local 1079 is fair and reasonable and, therefore, appellee did not violate section 301. *Cf. Local Union 657 of the UBCJA* v. *Sidell*, 552 F.2d 1250, 1256-57 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977) (interpreting same constitution and finding that decision to require local to affiliate with a district council was not "patently unreasonable" and did not violate section 301).

III.

Appellant argues that the district court erred in holding

that the UBCJA's decision that appellant had no right to appeal to the General Convention was not patently unreasonable. Section 57G of the constitution reads as follows: "[D]ecisions of the General Executive Board in all cases involving geographical jurisdiction, mergers, consolidations, and formation of Councils shall be final."

Appellant argues that section 57G does not apply because the actions of the UBCJA are a constructive expulsion or a suspension of Local 1079, and that under section 10H they have the right to appeal. Section 10H deals with actions that are generally contrary to the welfare of the UBCJA and reads as follows: "The General Executive Board is empowered to take such action as is necessary and proper for the welfare of the [UBCJA] subject, however, to the right of appeal to the next General Convention." Appellant also relies on its theory that its members would be denied the right to vote to support this argument.

Appellee argues that appellant's argument is without merit because Local 1079 has not shown that any member of Local 1079 was being expelled from the UBCJA. We agree.

Accordingly, we agree that the appellee's decision denying an appeal to the General Convention is fair and reasonable.

IV.

Finally, appellant argues that the appellee's actions violated the rights set forth in Subchapter II of the LMRA, 29 U.S.C. § 411. Section 102 of the LMRDA sets forth a cause of action for infringement of the rights set forth in section 101. Section 102 reads in relevant part as follows: "Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action . . . ." 29 U.S.C. § 412. The district court dismissed this claim holding that the claim must fail because "Plaintiff has not alleged any discrimination against classes of members." Appellant once again argues that the merger was an effective denial of its members' right to vote and, therefore, it infringed upon its section 101 rights. Appellee

argues alternatively that Local 1079 cannot bring an action because it is not a member under the LMRA[7] and even if it could bring such an action, it did not set forth a valid section 101 claim in this case.

District courts which have addressed the question of a local union's right to bring an action under the LMRDA have been divided. Appellant relies on *Local #1 (ACA), Broadcast Employees* v. *International Brotherhood of Teamsters*, 419 F. Supp. 263 (E.D. Pa. 1976), where the district court, relying on the LMRDA's definitional sections held that a local was a "member" under the LMRDA.

> The second question, then, was whether Local 1 itself is a 'member' of the IBT under LMRDA. (There can be no doubt that the individual plaintiffs are members.) As recounted above, the statute defines a 'member' as a 'person,' and a 'person' includes a local 'labor organization.' 29 U.S.C. §§ 402(o), (d), (i) (1970). Within this framework the IBT cannot successfully maintain the proposition that Local 1 is not a member of the IBT or that it has not 'fulfilled the requirements for membership' in the IBT . . . .

Id. at 72.

Appellee relies on *Commission House Drivers* v. *Teamsters Joint Council 41*, 575 F. Supp. 574 (N.D. Ohio 1984), where the district court relying on *Finnegan* v. *Leu*, 456 U.S. 431 (1982) and this court's decision in *Cehaich* v. *International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America*, 710 F.2d 234 (6th Cir. 1983) and the legislative history behind the LMRDA held that a local union is not a "member" under the LMRDA.[8]

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[7] The district court did not address the issue of Local 1079's right to sue under the LMRDA. Rather, the district court rules in appellee's favor on the merits.

[8] Appellee also relies on the Supreme Court's decision in *Finnegan* and

> This Court believes that *Finnegan* and *Cehaich* control this case and oblige it to hold that Local 400 is not a 'member of a labor organization' within the meaning of § 411(a)(5). This holding accords with Congress's intent in passing LMRDA; the statute was only intended to protect 'rank and file union members.' *Finnegan*, 456 U.S. at 437, 102 S. Ct. at 1871. A union local, just like a union officer, is a higher component of the union's organizational structure, not a member of the rank and file. Given this Court's holding that Local 400 is not a 'member of a labor organization' under § 411(a)(5), this Court also holds that Local 400 is not entitled to the procedural safeguards of LMRDA.

Commission House Drivers, 575 F. Supp. at 577.

This issue was recently focused on by yet another district court in *Nelson* v. *International Association of Bridge, Structural and Ornamental Iron Workers*, 680 F. Supp. 16 (D.D.C. 1988) where the court, while noting a split in authority, followed the "definitional" approach of *Broadcast Employees*, and held that a local is a member under the LMRDA.

> Although there is contradicting authority concerning a local's standing under the LMRDA, an analysis of the definitions in section 3 reveals that a local is a member of

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this court's decision in *Cehaich* to support its argument that Local 1079's failure to amend its complaint to add a member of the local as a plaintiff is fatal to its action since it is not a member of a labor organization under the LMRDA. In *Finnegan*, the Court held that the removal of a union's business agent was not violative of the LMRDA because the LMRDA applies to "members" of labor organizations and not employees of unions. 456 U.S. at 442. This court applied the *Finnegan* analysis in *Cehaich* and held that the dismissal of a union benefits representative was not violative of the act because the removal affected his status as an employee of the union, not as a member of the union. 710 F.2d at 239-40. Appellant distinguishes these cases by noting that the instant case is not a termination of union employment case, which requires an inquiry into the status of the plaintiff.

> the International as the term 'member' is used in section 101(a)(2). Authority to the contrary does not analyze the definitions and cites no authority for the proposition that locals do not have standing. Consequently, Local 505 may assert claims under section 101(a)(2).

Id. at 20-21.

Because we are unpersuaded by appellant's right to vote argument, and because we agree with the district court's determination that appellant did not set forth a meritorious LMRDA claim, we need not decide the issue of whether Local 1079 could bring a LMRDA claim. Therefore, assuming arguendo, that Local 1079 could bring such an action, we agree with the district court's dismissal of the LMRDA claim.

V.

For the foregoing reasons, we AFFIRM the judgment of the district court.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. C-2-88-534
JUDGE GRAHAM

Millwright Local #1079,

Plaintiff,

vs.

United Brotherhood of Carpenters
and Joiners of America, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

(Filed July 28, 1988)

INTRODUCTION

This matter came on for a hearing on the motion for a preliminary injunction on June 15, 1988 and for a trial on the merits on July 5, 1988. The action is brought under 29 U.S.C. §§ 185 and 411. The plaintiff alleges that the defendants' decision to dissolve the local union is unreasonable, in bad faith, and in violation of its rights.

FINDINGS OF FACT

1. The plaintiff, Millwright Local #1079, is a subordinate labor organization within the structure of the defendant United Brotherhood of Carpenters and Joiners of America (hereinafter United Brotherhood). Local #1079, is located in Steubenville, Ohio. It has jurisdiction over Columbiana, Jefferson, Harrison, Belmont, and Monroe Counties in Ohio and Ohio, Hancock, Brooke, and Marshall Counties in West Virginia.

2. The defendant United Brotherhood is an international

labor organization which has established several subordinate organizations, including the plaintiff local.

3. Defendant Sigurd Lucassen is the General President of the United Brotherhood.

4. The United Brotherhood is governed by a Constitution and Laws. Section 6(A) of the Constitution and Laws. Section 6(A) of the Constitution provides:

> Section 6. The jurisdiction of the United Brotherhood of Carpenters and Joiners of America shall include all branches of the Carpenter and Joiner trade. In it shall be vested the power through the International Body to establish and charter subordinate Local and Auxilliary Unions, District, State and Provincial Councils in all branches of the trade, and its mandates must be observed and obeyed at all times.
>
> In view of technological developments and industrial diversification no type of employment category shall be excluded from the jurisdiction of the United Brotherhood, whether or not spelled out in Section 7 or Section 42-F, provided that any employment category not therein specified shall be included with the approval of the General President as provided in Section 42-F.
>
> The United Brotherhood is empowered, upon agreement of the Local Unions and Councils directly affected, or in the discretion of the General President subject to appeal to the General Executive Board, where the General President finds that it is in the best interests of the United Brotherhood and its members, locally or at large, to establish or dissolve any Local Union or Council, to merge or consolidate Local Unions or Councils, to establish or alter the trade or geographical jurisdiction of any Local Union or Council, to form Councils and to permit, prohibit or require the affiliation with or disaffiliation from any Council by any Local Union, including the right to establish state-wide, province-wide and regional Local Unions or Councils having jurisdic-

> tion over specified branches or subdivisions of the trade. The vested rights of the members shall be preserved and where action as herein described is taken the General President and General Executive Board shall preserve the membership rights of the members of affected Local Unions, including their right to attend and participate in meetings, to vote, to nominate candidates and to be nominated and run for office or business representative. In connection with the foregoing the General President may, upon finding it appropriate, appoint a committee to hold hearings upon due notice to directly affected Local Unions or Councils, and make findings and recommendations.

5. Pursuant to § 6(A), the United Brotherhood has in recent years conducted a reorganization of its local unions and councils in the Midwest. This reorganization has taken place in all six states included in the Third District of the United Brotherhood.

6. This reorganization primarily took place along state lines. Business agents of districts and local unions which crossed state lines had experienced difficulty in keeping abreast of legal developments in more than one state.

7. An important objective of the reorganization was to eliminate autonomous local unions which were not affiliated with a district council. Instances of favoritism in job assignments were reported to have occurred in some of these autonomous locals. The United Brotherhood was not able to adequately respond to these charges because of the lack of centralized authority.

8. Another objective of the reorganization was to establish district councils consisting solely of millwrights. Previously, some local unions, known as mixed locals, included members of several specialty trades, including millwrights. Several major contractors had complained that mixed locals sometimes referred unqualified members when asked to provide millwrights.

9. Prior to beginning reorganization in Ohio, officers of the United Brotherhood held meetings in Canton, Toledo, Dayton, and Columbus with officers of local unions.

10. Charles Hagerty, the business agent and financial secretary of Local #1079, attended the meeting in Canton. Thomas Hanahan, the General Executive Board Member from the Third District, answered questions from the local officers in attendance.

11. On October 23, 1987, Charles Hagerty sent a letter to Patrick J. Campbell, then the General President of the United Brotherhood. The letter stated that Local #1079 opposed the consolidation or dissolution of the local and requested that the General President appoint a committee to hold hearings on the matter.

12. On January 25, 1988, Sigurd Lucasen, then the First General Vice President of the United Brotherhood, sent a letter to all of the local unions and district councils in Ohio. The letter set forth the new organization of the United Brotherhood in Ohio.

13. As part of the proposed reorganization, Local #1079 would be dissolved. That part of the Local's jurisdiction now in Ohio would be merged with Local #1871 in Cleveland. The new local union would represent all millwrights in the twenty-seven counties covered by the new District Council For Northeast Ohio. The headquarters of the new local would be in Cleveland.

14. That part of Local #1079's jurisdiction now in West Virginia would be transferred to a local union centered in Parkersburg, West Virginia.

15. Millwrights who are currently members of Local #1079 will have an option to join either the Cleveland local or the Parkersburg local.

16. On January 28, 1988, Local #1079 filed an appeal with the General Executive Board. The local asserted that its dissolution would not be in the best interests of the Brotherhood. The local also requested an opportunity to appear before the Board and present its arguments.

17. On February 17, 1988, John S. Rogers, the General Secretary of the United Brotherhood, informed Local #1079 that the General Executive Board had denied its request for an appearance. However, the Board requested that Local #1079 file a written position statement.

18. Local #1079 filed its position statement. In a decision dated April 20, 1988, the General Executive Board sustained the decision of the General President and dismissed the appeal of Local #1079. President Lucasen and Board Member Hanahan abstained from voting on this matter.

19. In a letter dated April 29, 1988, Local #1079 informed President Lucassen that it intended to appeal the General Executive Board's decision to the General Convention.

20. In a letter dated May 4, 1988, President Lucassen stated that the Board's decision could not be appealed to the General Convention. Lucassen relied on Section 57(G) of the Constitution and Laws of the Brotherhood, which provides, in pertinent part:

> Also, decisions of the General Executive Board in all cases involving geographical jurisdiction, mergers, consolidations, and formation of Councils shall be final.

21. On May 5, 1988, Local #1079 commenced an action in the Court of Common Pleas of Jefferson County, Ohio which sought to enjoin the United Brotherhood from removing the local's charter or otherwise interfering with its continued operation. The defendants removed the action to this Court on May 13, 1988.

22. Under Section 46(C) of the Constitution and Laws of the United Brotherhood, a member of any local may work within another local's jurisdiction by obtaining a working permit. Therefore, Local #1079 members who join the Cleveland local will not be barred from working in West Virginia, and those who join the Parkersburg local will not be barred from working in Ohio.

23. A union member who works within another local's

jurisdiction under a permit may encounter resentment from members of that local. However, this would be true whether or not the proposed reorganization takes place. Additionally, one purpose of the reorganization is to strengthen the ability of the United Brotherhood to prevent favoritism and discrimination by local unions.

24. The Northeast Ohio Council has offices in Norwalk, Cleveland, Youngstown, and the Akron-Canton area and will have one in Steubenville. These offices are well-distributed throughout the territory of the local and are reasonably accessible to all members.

25. In several other districts, meeting locations are rotated among the district's offices. Mail-in ballots are also used in some districts to facilitate voting by members who do not live near a district office. Board Member Hanahan has directed the Northeast Ohio Council to adopt one or both of these methods in order to accommodate all members.

26. There is no evidence that a contractor intends to, or has threatened to, reject a pending collective bargaining agreement because of the proposed reorganization. Moreover, the United Counties District Council has informed employers that current collective bargaining agreements will be enforced following the restructuring.

27. There is no evidence that President Lucassen acted in bad faith in deciding that Local #1079 should be dissolved or in denying the local an opportunity to appeal to the General Convention or that the General Executive Board was guilty of bad faith in denying plaintiff's appeal from President Lucassen's decision.

28. It is not clear what effect, if any, the proposed reorganization plan may have on the health and welfare benefits of Local #1079 members. Members are concerned that they may lose banked hours and that the rate of contribution may be altered. However, even if this should occur it is insufficient to demonstrate bad faith on the part of the United Brotherhood. The wisdom of the United Brotherhood's decision is not an issue in this action.

29. If union members are deprived of their contractual

rights, they may seek redress through appropriate legal procedures. It appears that litigation is currently pending over the relationship between a Taft-Hartley trust fund and The Ohio Carpenters Health and Welfare Fund. However, those issues and all necessary parties are not before this Court.

30. The evidence was conflicting as to whether members of Local #1079 would have to wait one year before being eligible to hold office under Section 31(E) of the union constitution. Witnesses for the plaintiff testified that members of the local would be subject to the limitation. Board Member Hanahan, however, testified that, in his opinion, the one-year limitation does not apply when one local is merged with another. In any event, there is no evidence that the reorganization was undertaken with the purpose of barring members of Local #1079 from holding office for a year.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over plaintiff's claim of a violation of the United Brotherhood's Constitution under § 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185(a), which provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties.

2. A union constitution is a contract between labor organizations within the meaning of 29 U.S.C. § 185(a). *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada* v. *Local 334, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada*, 452 U.S. 615 (1981).

3. A court may interfere with a union official's interpretation of a union constitution only when that interpretation is not fair or reasonable. *Vestal* v. *Hoffa*, 451 F.2d 706 (6th Cir. 1971). *See also Motion Picture & Videotape Editors Guild, Local 776* v. *International Sound Technicians, Local 695*, 800 F.2d 973 (9th Cir. 1986); *Newell* v. *International Brotherhood of Electrical Workers*, 789 F.2d 1186 (5th Cir. 1986); *Association of Contracting Plumbers of the City of New York, Inc.* v. *Local Union No. 2, United Association of Journeymen & Apprentices*, 676 F. Supp. 523 (S.D. N.Y. 1988).

4. Under Section 6(A) of the United Brotherhood's Constitution, President Lucassen was empowered to order the dissolution of Local #1079 and its merger with two other local unions. This Court is "not empowered to rewrite the Brotherhood's constitution to strip [Lucassen] of his authority to require this affiliation." *Local Union No. 657, United Brotherhood of Carpenters & Joiners of America of Sheboygan County* v. *Sidell*, 552 F.2d 1250, 1256 (7th Cir. 1977), *cert. denied* 434 U.S. 862 (1977) (construing the same constitution).

5. President Lucassen's determination that Section 57(G) barred an appeal of the General Executive Board's decision on reorganization to the General Convention was not patently unreasonable. *See Sidell*, 552 F.2d at 1257.

6. Section 101 of the Labor-Management Reporting and Disclosure Act, (LMRDA), 29 U.S.C. § 411, was "meant to secure individual membership rights, not to guarantee the perpetuity of a given local union." *Strong* v. *Sheet Metal Workers*, 90 LRRM 2795, 2801 (N.D. Cal. 1974). *See also Stage Employees Local 796* v. *Powell*, 124 LRRM 2053 (N.D. Cal. 1986); *Cox* v. *Hutcheson*, 204 F. Supp. 442 (S.D. Ind. 1962).

7. Section 411(a)(1) provides that:

> Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums

> of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and by-laws.

8. This section "is no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote." *Calhoon* v. *Harvey*, 379 U.S. 134, 139 (1974). *See also Mallick* v. *International Brotherhood of Electrical Workers*, 749 F.2d 771, 786 (D.C. Cir. 1984). Plaintiff has not alleged any discrimination against classes of members.

9. This Court has no power to invalidate the planned reorganization simply because it may prevent the members of Local #1079 from continuing to vote as a bloc or from having their own delegate to the General Convention. Section 411(a)(1) guarantees only the equal right to vote, not the right of any one group to retain power within a union.

10. Absent an intent to punish the exercise of a right protected by § 411, the merger of one local union with another does not constitute "discipline" which would require due process under § 411(a)(5). *Millinery Workers' Union Local 55/56* v. *United Hatters*, 495 F. Supp. 60, 63 (E.D. Mo. 1980), aff'd 657 F.2d 274 (8th Cir. 1981); *Local Union No. 1 (ACA), Broadcast Employees* v. *International Brotherhood of Teamsters*, 419 F. Supp. 263, 273 (E.D. Pa. 1976). No such motivation has been established in this case.

11. Where no violation of law has been proven, the Court may not interfere with the internal affairs of the United Brotherhood. As the Second Circuit has noted:

> The provisions of the L.M.R.D.A. were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of unions. Courts have no special expertise in the operation of unions which would justify a broad power to interfere. The internal operations of unions are to be left to the officials

> chosen by the members to manage those operations except in the very limited instances expressly provided by the Act. The conviction of some judges that they are better able to administer a union's affairs than the elected officials is wholly without foundation. Most unions are honestly and efficiently administered and are much more likely to continue to be so if they are free from officious intermeddling by the courts. General supervision of unions by the courts would not contribute to the betterment of the unions or their members or to the cause of labor-management relations.

Burten v. *Arons*, 339 F.2d 371, 375 (2d Cir. 1964).

12. A contractor may not unilaterally repudiate an existing prehire agreement with the United Brotherhood. *Iron Workers Local 3* v. *NLRB (Deklewa)*, 282 NLRB No. 184, 124 L.R.R.M. 1185 (1987), *enforced*, 843 F.2d 770 (3d Cir. 1988). Therefore, the proposed merger will not jeopardize any existing agreements under which members of Local #1079 currently work.

13. A contractor may at any time petition the National Labor Relations Board to conduct an election to determine the majority status of the union. 29 U.S.C. § 158(f). This is true whether or not the proposed merger takes place.

14. The plaintiff has failed to establish a violation of 29 U.S.C. § 185 or 29 U.S.C. § 411.

CONCLUSION

For the foregoing reasons, the Court hereby grants judgment in favor of the defendant, the United Brotherhood of Carpenters and Joiners of America.

/s/ JAMES L. GRAHAM
United States District Judge

DATE: July 27, 1988